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February 8, 1995

DOCKET FILE COPY ORIGINAL

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **WVHF-FM, Clarksburg, WV**
File No. BPH-940418IC
1800B3-WBE

Dear Mr. Caton:

Transmitted herewith, on behalf of Tiger Broadcasting, Inc. ("TBI"), licensee of Station WVHF-FM, Clarksburg, West Virginia, are an original and four (4) copies of its Petition for Rulemaking.

This Petition is filed in response to a letter of August 29, 1994, from Dale E. Bickel, Supervisory Electronics Engineer, FM Branch, Audio Services, Mass Media Bureau wherein he proposes, in footnote 1 of that letter, the option of filing a Petition for Rulemaking substituting Channel 258A for Channel 221A at Clarksburg, West Virginia, in order to resolve interference on Channel 221A.

Should further information be desired in connection with this Petition, please communicate with this office.

Very truly yours,



Robert L. Olender
Counsel for
TIGER BROADCASTING, INC.

RLO:bpt
Enclosure
cc: Dale Bickel (w/enclosure)
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FEB - 8 1995

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
of the Commission's Rules) RM
)
Table of Allotments, FM)
Broadcast Stations)
)
TIGER BROADCASTING, INC.)
Licensee of Station WVHF-FM,)
Clarksburg, West Virginia)

To: Chief, Mass Media Bureau

PETITION FOR RULEMAKING

Tiger Broadcasting, Inc. ("TBI"), licensee of Radio Station WVHF-FM, Clarksburg, West Virginia, through counsel, herein petitions the Commission to amend Section 73.202(b), 47 C. F. R. 73.202(b) of the Commission's FM Table of Allotments to substitute Channel 258A for Channel 221A at Clarksburg, West Virginia. In support thereof, the following is shown:

TBI currently has an application pending at the Commission for a construction permit to specify operation on Channel 221A as required by the Commission in its Report and Order in MM Docket No. 90-575, 6 FCC Rcd. 3323 (1991). However, the Commission on August 29, 1994, notified TBI that its operation on Channel 221A violated the contour protection requirements with respect to Station WXIE(FM).

Thus, it was proposed by the Commission's staff that a rulemaking be filed substituting Channel 258A for Channel 221A in order to resolve this problem. Currently, there is an impediment to accomplishing this rulemaking because of the

pending application for review in Docket No. 89-580 opposing the upgrade of Station WDNE-FM, Elkins, West Virginia, from Channel 258A to Channel 255B1. However, once that docket becomes final, Channel 258A will become available for TBI's rulemaking request for WVHF-FM.

In accordance with the attached Engineering Statement, prepared by Lawrence L. Morton, consulting engineer, modification of the license of WVHF-FM to Channel 258A meets the minimum spacing requirements of Section 73.207 of the Commission's rules and regulations. Furthermore, the rulemaking will free Channel 221A at Clarksburg for future use once Channel 258A is allocated for WVHF-FM. TBI advises the Commission that upon adoption of this rulemaking, it will file an application for construction permit on Channel 258A for Station WVHF-FM.

WHEREFORE, it is respectfully requested that Channel 258A be substituted for Channel 221A for Station WVHF-FM at Clarksburg, West Virginia.

Respectfully submitted,

TIGER BROADCASTING, INC.

By:



Robert L. Olender
Its Attorney

**BARAFF, KOERNER, OLENDER
& HOCHBERG, P.C.**
5335 Wisconsin Avenue, N.W.
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(202) 686-3200
February 8, 1995
26166.00\Pleading.207

**ENGINEERING STATEMENT
IN SUPPORT OF
PETITION FOR RULE MAKING**

February 3, 1995

Tiger Broadcasting, Inc.
Radio Station WVHF-FM
FM Channel 258A □ 99.5 Megahertz
Clarksburg, West Virginia



LAWRENCE L. MORTON ASSOCIATES
1231 MESA OAKS LANE
MESA OAKS, CALIFORNIA 93436-2309
(805) 733-4275 / FAX (805) 733-4793

ENGINEERING STATEMENT

The information contained within this engineering statement was prepared on behalf of Tiger Broadcasting, Inc., licensee of station WVHF-FM, in support of a petition for rule making. The petitioner proposes to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b) of the Commission's Rules, by substituting Channel 258A for Channel 221A at Clarksburg, West Virginia.

I. DISCUSSION

Pursuant to Report and Order in MM Docket No. 90-575, 6 FCC Rcd 3323, 56 Fed Reg. 26338 (1991), released June 3, 1991 and effective July 19, 1991, the Commission modified the allotment for WVHF-FM from Channel 224A to Channel 221A at Clarksburg. Channel 224A was deleted from the Table of Allotments.

On April 18, 1994, the licensee filed an application for construction permit to specify operation on Channel 221A, as required by the Report and Order. The application specified the WVHF-FM licensed transmitter site using a non-directional antenna system, and requested processing under the provisions of 47 C.F.R. § 73.215. On August 29, 1994, the Commission sent a letter to the applicant, reference no. 1800B3-WBE, pointing out that the proposed Channel 221A facility violated the contour protection requirements of 47 C.F.R. § 73.215(a), with respect to first adjacent channel station WXIE(FM).

A footnote to the Commission's letter suggested that one possible solution to the deficiency might be to file a petition for rule making asking the Commission to change the allocated channel for WVHF-FM from Channel 221A to Channel 258A.

WDNE-FM, operating on Channel 257A at Elkins, West Virginia, has been ordered to change to Channel 255B1 by Docket No. 89-580, but has not yet done so pending the outcome of an appeal (application for review) in that docket. However, once Docket No. 89-580 becomes final and WDNE-FM moves to Channel 255B1, Channel 258A will become available for use at Clarksburg from the present WVHF-FM transmitter site.

Independent analysis of the Table of Allotments confirms that Channel 258A will become available once WDNE-FM vacates Channel 257A. Accordingly, Tiger Broadcasting, Inc., herein requests the substitution of Channel 258A for Channel 221A at Clarksburg and modification of the WVHF-FM license to specify operation on Channel 258A.

II. SUBSTITUTION OF CHANNEL 258A

The geographic coordinates of the licensed WVHF-FM site, referenced to the North American Datum of 1927, are:

North Latitude: 39 degrees, 17 minutes, 27 seconds
West Longitude: 80 degrees, 18 minutes, 56 seconds

From this site, Channel 258A will be fully-spaced to all licensed and proposed facilities and vacant allotments, once WDNE-FM moves to Channel 255B1.

Figure one cartographically represents the area in which Channel 258A will be fully-spaced, and denotes the location of the licensed WVHF-FM transmitter site.

III. ALTERNATE CHANNEL AT CLARKSBURG

By substituting Channel 258A for Channel 221A at Clarksburg and modifying the license of WVHF-FM to specify operation on Channel 258A, Channel 221A will become available, should another expression of interest be received. Therefore, the allotment Channel 258A at Clarksburg does not preclude the future use of Channel 221A at or near Clarksburg, West Virginia.

IV. MINIMUM SPACING REQUIREMENTS

The following table shows a listing of the nearest licensed facilities and allocations currently on file with the required distance separations for Channel 258A. Facilities that are greater than 350 kilometers beyond the minimum required separations are not shown.

As required by § 73.207, all minimum distance separation requirements are met from the WVHF-FM licensed transmitter site, except with respect to the presently licensed facility of WDNE-FM. All distances were computed by the methods outlined in § 73.208(c) of the Commission's Rules and were rounded to the nearest kilometer in accordance with § 73.208(c)(8).

ALLOCATION-PERTINENT STATIONS AND SPACING REQUIREMENTS OF § 73.207					
STATION	CHANNEL /CLASS	LOC. 1	LOC. 2	SEPARATION DISTANCE	SEPARATION DISTANCE
WMMT	204-C1	37° 06' 38"	82° 44' 15"	322. Km	22. Km
WRFH	204-B1	40° 04' 29"	76° 48' 01"	314	12
WOBO	204-B	39° 03' 43"	84° 05' 50"	328	15
WBHR	204-A	40° 01' 03"	80° 44' 34"	89	10
WVPW	205-B	39° 02' 04"	80° 33' 47"	36	15
WKBN-FM	255-B	41° 03' 24"	80° 38' 44"	198	69
ALLOC	255-B1	38° 55' 25"	79° 51' 33"	57	48
WSIP-FM	255-C1	37° 47' 45"	82° 48' 04"	273	75
WHCM	256-B1	39° 17' 15"	81° 39' 25"	116	48
WSLQ	256-C	37° 11' 41"	80° 09' 22"	233	95
WQKK	256-B	40° 24' 41"	78° 46' 29"	181	69
WAEZ	257-C3	36° 25' 53"	82° 08' 16"	356	89
WFRA-FM	257-B1	41° 26' 16"	79° 55' 29"	241	96
WPQR-FM	257-A	39° 53' 09"	79° 46' 29"	81	72
WDNE-FM	257-A	38° 51' 53"	79° 48' 26"	64.60 ¹	72
CJBC4F	257-B	42° 57' 20"	81° 21' 20"	417	149
WAEZ	257-C2	36° 20' 30"	82° 14' 00"	369	106
ALLOC	258-A	43° 59' 00"	80° 44' 00"	523	180
WJLS-FM	258-B	37° 35' 23"	81° 06' 51"	201	178
WBYG	258-A	38° 50' 49"	82° 07' 50"	165	115
WAOL	258-C3	38° 43' 28"	83° 59' 02"	324	142
WMAG	258-C	35° 52' 13"	79° 50' 25"	383	226
WRFX-FM	259-C1	35° 17' 14"	80° 41' 45"	446	133
WSHH	259-B	40° 27' 47"	80° 00' 17"	133	113
ALLOC	259-C3	37° 02' 56"	82° 37' 35"	321	89
PRM	260-C3	36° 48' 47"	80° 04' 41"	276	42
WVAF	260-B	38° 19' 07"	81° 32' 28"	152	69
WZBB	260-C3	36° 48' 47"	80° 04' 41"	276	42
WPRR	261-B1	40° 34' 11"	78° 26' 25"	214	48
WCLG-FM	261-A	39° 37' 40"	79° 58' 11"	48	31
WLYK	261-C3	37° 27' 00"	79° 04' 29"	231	42
WWYC	261-C2	38° 07' 25"	84° 26' 45"	381	55

¹ WDNE-FM has been ordered to change to Channel 255B1 by Docket No. 89-580 but has not done so pending the outcome of an appeal in that case. The proposed allotment of Channel 258A at Clarksburg cannot be acted upon until final resolution of the referenced proceeding.

V. CONCLUSION

From this study it has been determined that the FM Table of Allotments of § 73.202(b) of the Commission's Rules may be amended with technical compliance of all applicable Rules. The petitioner respectfully requests the following change to the Table:

PRESENT

COMMUNITY

Clarksburg, West Virginia

CHANNEL

221A

PROPOSED

COMMUNITY

Clarksburg, West Virginia

CHANNEL

258A

The petitioner asserts that, upon allotment of Channel 258A to Clarksburg, an application for construction permit will be filed forthwith.

Respectfully Submitted,

**Lawrence L. Morton, P.E.
Consulting Engineer to the Petitioner
February 3, 1995**

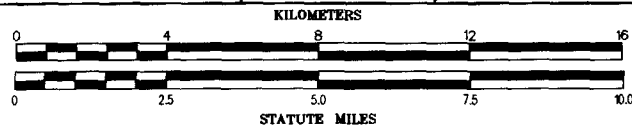
Lambert Azimuthal Equal-Area

5' 00" Graticule Spacing

CENTER OF MAP:
N LAT 39 14' 10.00"
W LON 80 24' 02.00"

Scale 1 : 200,441

FIGURE 1
FULLY-SPACED AREA TO LOCATE
CHANNEL 258A
CLARKSBURG, WEST VIRGINIA



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Mesa Oaks, California



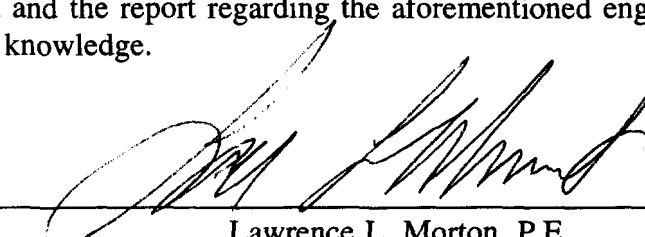
AFFIDAVIT

State of California)
) ss:
County of Orange)

Lawrence L. Morton, being first duly sworn upon oath, deposes and says:

- That he is a qualified engineer,
- That he is a Registered Professional Engineer in the State of California,
- That he is a member of the Association of Federal Communications Consulting Engineers,
- That his qualifications are a matter of record with the Federal Communications Commission,
- That he has prepared many broadcast applications and engineering exhibits that have been filed with and granted by the Federal Communications Commission,
- That he has carried out such engineering work and that the results thereof are attached hereto and form part of this affidavit, and
- That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge.

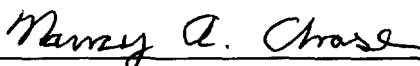
Date: February 3, 1995



Lawrence L. Morton, P.E.

On February 3, 1995, before me, Nancy A. Chase, a Notary Public, in and for the State of California, personally appeared Lawrence L. Morton known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My Commission expires 11/30/96



Nancy A. Chase
Notary Public

